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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

STULTZ v. COMMONWEALTH.

Nov. 15, 1917.

[94 S. E. 334.]

Error to Circuit Court, Rockingham County.

R. L. Stultz was convicted, and brings error. Affirmed.

John W. Morrison and *Chas. A. Hammer*, both of Harrisonburg, for plaintiff in error.

The Attorney General, for the Commonwealth.

Affirmed without opinion on the authority of *Cochran v. Commonwealth* (Va.), 94 S. E. 329, ante, p. 97

ALEXANDER v. CRITCHER et al.

Nov. 15, 1917.

[94 S. E. 335.]

1. Contracts (§ 169*)—Construction—Circumstances and Preliminary Negotiations.—In determining the meaning and effect of a written contract, it is proper to consider the situation of the parties and the circumstances and negotiations which lead up to its execution.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 395.]

2. Contracts (§ 155*)—Contract Prepared by Plaintiff—Construction.—The contract, under which defendant claims an interest in the profits of the sale of the land by plaintiff, having been prepared by plaintiff, or under his direction, it is to be construed most strongly against him, giving defendant all that the words used are capable of passing.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 400.]

3. Brokers (§ 55 (1)*)—Contract for Commissions—Performance.—Defendant, an attorney, had a lien upon certain land, and in the suit to enforce the lien, plaintiff purchased under the decree, pursuant to an agreement with defendant after the purchase, that defendant was to have one-third of the profits upon a resale by plaintiff with the assistance of defendant, in consideration that defendant use his best efforts to make a sale of the property to prospective buyers, use his best efforts to keep fire off the property, and keep parties from rob-

*For other cases, see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

bing the same. Defendant, after the purchase by plaintiff, continued to look after the property, was active and diligent in his efforts to make a sale, and responded promptly and helpfully when called upon in the preliminary negotiation, resulting in a sale of the land at a profit. Held, that defendant did all that was contemplated to entitle him to one-third of the profits; there being no stipulation that defendant should make the sale as a condition, entitling him to a share in the profits.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 638.]

4. Brokers (§ 65 (1)*)—Commissions—Interference with Sale.—That defendant notified the purchaser before sale was consummated of his rights was nothing more than a proper assertion of rights, not amounting to an interference with the sale barring recovery of one-third of the profits.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 642.]

5. Appeal and Error (§ 1022 (3)*)—Review—Commissioner's Report—Conflicting Evidence.—A commissioner's report, based upon conflicting evidence and approved by the trial court, will not be disturbed on appeal, unless the error complained of is palpable.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620, 623.]

6. Appeal and Error (§ 934 (2)*)—Decree on Conflicting Evidence—Presumption.—There is a presumption in favor of the decrees of trial courts, which is entitled to special consideration, when the decree is based on uncertain and conflicting testimony which has received careful consideration.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 609.]

7. Homestead (§ 90*)—Exemptions—"Fiduciary" Debt.—One procured to purchase property on an agreement that another should have one-third of the profits on resale was not a "fiduciary" within Code 1904, § 3630, cl. 3, providing that the homestead exemption shall not extend to any execution or process on a demand for liabilities incurred by any fiduciary.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Fiduciary.* 7 Va.-W. Va. Enc. Dig. 93; 6 Va. Law Reg. 196, cited by the court.]

Appeal from Circuit Court, Rockbridge County.

Bill by J. A. Alexander against John Critcher and others, in which defendant filed an answer and cross-bill. Decree for defendants, and plaintiff appeals. Decree amended, and affirmed.

Hugh A. White, of Lexington, and *J. A. Alexander* and *S. D. Timberlake*, both of Staunton, for appellant.

John Critcher, *Wm. A. Anderson*, and *G. D. Letcher*, all of Lexington, for appellees.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.